

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et. al,

Plaintiffs

vs.

UNITED STATES OF
AMERICA,

Defendant

NO. 5:18-CV-00555-XR

(consolidated cases)

**OPPOSED MOTION FOR ORDER REFERRING CASE TO
MEDIATION**

Plaintiffs respectfully request the Court order mediation in this matter with a U.S. Magistrate selected by the Court to be simultaneously pursued without continuation of the damages trial scheduled to resume on November 1, 2021, for the reasons set forth below:

Introduction and Background

On Thursday, October 7, 2021, the Court requested a status update on the positions of the parties on settlement of the underlying case.

At that time, lead counsel for Plaintiffs, Jamal Alsaffar, indicated to the Court that Plaintiffs had been waiting well over a year for a response to Plaintiffs' demand packages that had been requested by and provided to the

Department of Justice (DOJ). Then, DOJ requested Plaintiffs to submit a second round of information, and Plaintiffs promptly complied.

The attorney for the Plaintiffs, Daniel Barks, who has been the primary contact with the Government during the settlement process, then contacted the DOJ to obtain a response. While assuring Plaintiffs that the Government would engage and respond to the two demands they requested, no actual response has come in any form.

Next, following this Court's October 7th inquiry about settlement negotiations, Plaintiffs' counsel again contacted DOJ (along with the local United States Attorneys' office). After several discussions and attempts to move forward with meaningful discussions, conversations stalled once DOJ informed Plaintiffs' counsel that regardless of what Plaintiffs offered, no person with authority would present an offer on behalf of the Government.

As of the date of this filing, 1,447 days have passed since the shooting.

Before the claims for the losses of their family members matured, Robert Lookingbill and Roy White passed away.

Since the filing of this case, three Plaintiffs—Jose Rodriguez, Guadalupe Rodriguez, and Patsy McCain—have lost their lives, and their claims expired with them.

As of the time of this filing, Plaintiff Claryce Holcombe is 88 and in hospice care. Plaintiff Joe Holcombe is 90, Plaintiff Margarette Vidal is 78, and Plaintiff Farida Brown is 77. And Plaintiff Jennifer Macias is in

Intensive Care with indications from her doctors that they can do nothing more for her condition.

Argument

The Alternative Dispute Resolution Act of 1998 was intended to “encourage and promote the use of alternative dispute resolution” in the federal district courts. These are consolidated separate cases. Each case—viewed on its own—contains resolvable individual claims based on legal causes of action, the types of which the United States routinely faces and resolves in the FTCA context.

Plaintiffs still believe that each of their individual cases can be settled within a monetary range that the United States regularly settles injury and death cases. Therefore, Plaintiffs are perplexed at why there has been no response from the United States.

Plaintiffs respectfully ask this Court to order a mediation conducted by a United States Magistrate Judge for the Western District of Texas, San Antonio Division, to be conducted in parallel and without delaying the damages portion of the trial.

Plaintiffs request that the Department of Justice ensure that an attorney from the Civil Division in Washington, DC with authority to settle these matters be present virtually or in person to participate in the mediation.

Plaintiffs request that this be ordered for some time during the week of October 25, 2021 and shall not object if the Government wishes to provide

individuals with authority via some virtual method, such as Zoom for this mediation.

However, if scheduling prevents the mediation of these cases during the week of October 25, 2021, Plaintiffs believe that mediation can proceed without disrupting the trial schedule. If it is necessary to set it during dates the Court has scheduled this matter for trial, then Plaintiffs can proceed and have Plaintiffs' co-lead counsel, Daniel Barks, as well as other Plaintiffs' counsel, available to participate in mediation with authority to resolve all claims. If necessary, Plaintiffs can hold the mediation in Washington DC, in person, for the Government's convenience since the attorneys with Government authority are all located in Washington DC.

Similarly, because the trial team for the Government has previously indicated that settlement direction and authority over these cases is beyond the authority of the local United States Attorneys' Office and that settlement decisions are being deferred to the Department of Justice, Plaintiffs request that an appropriate representative of the Department of Justice from Washington, DC be present and available to participate in the mediation.

Conclusion

Considering these facts and circumstances, and in furtherance of the objectives of Alternative Dispute Resolution contained within Local Rule CV-88, Plaintiffs respectfully request that the Court refer each of these

consolidated cases to mediation with a United States Magistrate Judge during the week of October 25, 2021.

Plaintiffs further request that the Court order that counsel and party representatives conduct the mediation in good faith, whether remotely or in person, so long as all necessary individuals with authority to negotiate a settlement are available to meaningfully participate.

CERTIFICATE OF CONFERENCE

A member of Plaintiffs' Co-Lead Counsel has conferred with trial counsel for the United States, and they oppose this filing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of the foregoing document has been sent to the following on October 22, 2021 via the Court's CM/ECF notice system.

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